**KERAJAAN NEGERI KELANTAN** A

**v.**

**KERAJAAN MALAYSIA**

COURT OF APPEAL, PUTRAJAYA B
LOW HOP BING JCA
ABU SAMAH NORDIN JCA
ALIZATUL KHAIR OSMAN JCA
[CIVIL APPEAL NO: W-01(IM)(NCvC)-230-11]
7 JUNE 2011 C

***CIVIL PROCEDURE:*** *Parties - Intervention - Intervention in proceedings - Whether plaintiff's claim affected rights of proposed intervener - Whether proposed intervener should be added as a party - Whether proposed intervener satisfied requirements of O. 15 r. 6(2)(b)(i) and (ii) Rules of the High Court 1980 - Whether High Court correct in granting proposed intervener leave to intervene* D

The Kelantan State Government ("the plaintiff") appealed against the decision of the High Court in allowing the application by the Government of Malaysia for leave to intervene and be joined as the second defendant ("the joinder application") pursuant to O. 15 r. 6(2)(b)(i) and (ii) of the Rules of the High Court 1980. Briefly, the facts were that the plaintiff and Petronas had entered into an agreement ('the Kelantan Petroleum Agreement') whereby, in consideration of the vesting by the plaintiff of the entire ownership and the exclusive rights of obtaining petroleum whether onshore or offshore of Kelantan, Petronas will make cash payments equivalent to 5% of the value of petroleum gathered onshore and offshore of Kelantan and sold by Petronas, its agents or contractors. Subsequently, when disputes arose, the plaintiff filed an action in the High Court against Petronas seeking, *inter alia*, specific performance of the Kelantan Petroleum Agreement. The Government of Malaysia then filed the joinder application which was resisted by the plaintiff. The issue for determination herein was whether, upon a true construction of the requirements set out in O. 15 r. 6(2)(b)(i) and (ii), was the High Court correct in granting the Government of Malaysia leave to intervene and be joined as the second defendant. E F G H I

**Held (dismissing the appeal)**
**Per Low Hop Bing JCA delivering the judgment of the court:**

**(1)** The Government of Malaysia had entered into agreements which vested in Petronas the ownership of petroleum in consideration of cash payments in respect of petroleum lying onshore or offshore of Malaysia, even before the Kelantan Petroleum Agreement came into being. The Government of Malaysia claimed that petroleum lying in waters beyond three nautical miles adjacent to the coasts of Kelantan and in the continental shelf belonged to the Government of Malaysia. The plaintiff's claim in the action allegedly went beyond the said three nautical miles, thereby touching on the entitlement and rights of the Government of Malaysia. Based on the aforesaid agreements, there were obvious disputes between the plaintiff and the Government of Malaysia relating to the rights and ownership of petroleum which were vested in Petronas. The plaintiff's claim premised on the Kelantan Petroleum Agreement clearly affected the rights of the Government of Malaysia. (para 17)

**(2)** There were several issues or questions which were crucial and which required determination in the plaintiff's action in order to resolve the plaintiff's rights. These issues or questions had direct legal effect on the rights of the Government of Malaysia whose presence before the court was clearly necessary to ensure that the matter in dispute arising from ownership of petroleum was effectually and completely determined and adjudicated upon. Hence, to determine the issues between the plaintiff on the one hand, and Petronas and the Government of Malaysia on the other, it would be just and convenient that the Government of Malaysia be added as a party to the High Court action. The Government of Malaysia as the proposed intervener had satisfied the requirements of O. 15 r. 6(2)(b)(i) and/or (ii) to enable it to intervene and to be joined as the second defendant in the proceedings before the High Court. (paras 18-20)

***Bahasa Malaysia*** *Translation Of Headnotes*

Kerajaan Negeri Kelantan ('plaintif') merayu terhadap keputusan Mahkamah Tinggi yang telah membenarkan permohonan Kerajaan Malaysia kebenaran untuk mencelah dan dicantumkan sebagai defendan kedua ('permohonan percantuman') di bawah A. 15

k. 6(2)(b)(i) dan (ii) Kaedah-kaedah Mahkamah Tinggi 1980. Secara ringkas, fakta-fakta adalah plaintif dan Petronas telah memasuki perjanjian ('Perjanjian Petroleum Kelantan') di mana, dalam pertimbangan perletakhakkan oleh plaintif keseluruhan pemilikan dan hak eksklusif memperolehi petroleum sama ada di daratan atau lepas pantai negeri Kelantan, Petronas akan membuat bayaran tunai bersamaan 5% nilai petroleum yang dikumpulkan di daratan atau lepas pantai negeri Kelantan dan dijual oleh Petronas, ejen-ejen atau kontraktor-kontraktornya. Kemudiannya, apabila pertikaian-pertikaian timbul, plaintif memfailkan tindakan di Mahkamah Tinggi terhadap Petronas menuntut, antara lain, pelaksanaan spesifik Perjanjian Petroleum Kelantan. Kerajaan Malaysia kemudiannya memfailkan permohonan percantuman yang telah dibantah oleh plaintif. Isu untuk dipertimbangkan di sini adalah sama ada, pada pentafsiran sebenar kehendak-kehendak yang ditetapkan dalam A. 15 k. 6(2)(b)(i) dan (ii), adakah Mahkamah Tinggi betul apabila ia telah memberi Kerajaan Malaysia kebenaran untuk mencelah dan dicantumkan sebagai defendan kedua.

**Diputuskan (menolak rayuan)**
**Oleh Low Hop Bing HMR menyampaikan penghakiman mahkamah:**

**(1)** Kerajaan Malaysia telah memasuki persetujuan-persetujuan yang meletakhak di Petronas milikan petroleum dalam pertimbangan bayaran tunai berhubungan dengan petroleum yang terdapat di daratan dan lepas pantai Malaysia, walaupun sebelum Perjanjian Petroleum Kelantan wujud. Kerajaan Malaysia berhujah bahawa petroleum yang terdapat di perairan melebihi tiga batu nautika bersebelahan dengan pantai-pantai Kelantan dan dalam pentas benua adalah kepunyaan Kerajaan Malaysia. Tuntutan plaintif di dalam tindakan didakwa melampaui batas tiga batu nautika tersebut, oleh itu ia menyentuh hak-hak Kerajaan Malaysia. Berdasarkan persetujuan-persetujuan tersebut, terdapat pertikaian-pertikaian yang jelas di antara plaintif dan Kerajaan Malaysia berhubungan dengan hak-hak dan milikan petroleum yang telah diletakhak di Petronas. Tuntuan plaintif berdasarkan Perjanjian Petroleum Kelantan dengan jelas menjejas hak-hak Kerajaan Malaysia.

**(2)** Terdapat beberapa isu-isu dan persoalan-persoalan yang genting dan memerlukan penentuan di dalam tindakan plaintif supaya menyelesaikan hak-hak plaintif. Isu-isu dan persoalan-persoalan ini mempengaruhi undang-undang terus ke atas hak-hak Kerajaan Malaysia yang kehadirannya di hadapan mahkamah adalah jelas perlu untuk memastikan perkara dalam pertikaian yang berbangkit dari milikan petroleum adalah ditentukan dan dihakimi dengan efektif dan sepenuhnya. Oleh itu, untuk menentukan isu-isu di antara plaintif di satu pihak, dan Petronas dan Kerajaan Malaysia di pihak yang lain, ia adalah adil dan mudah untuk Kerajaan Malaysia ditambahkan sebagai satu pihak di tindakan Mahkamah Tinggi. Kerajaan Malaysia sebagai pencelah yang dicadangkan telah memenuhi kehendak-kehendak A. 15 k. 6(2)(b)(i) dan/atau (ii) untuk membolehkan ia mencelah dan dicantumkan sebagai defendan kedua di dalam prosiding-prosiding di hadapan Mahkamah Tinggi.

**Case(s) referred to:**

*Arab Malaysian Merchant Bank Bhd v. Dr Jamaludin Dato' Mohd Jarjis [1991] 2 CLJ 862; [1991] 1 CLJ (Rep) 19 SC* ***(refd)***

*Chong Fook Sin v. Amanah Raya Bhd & Ors [2010] 7 CLJ 917 FC* ***(refd)***

*Kuala Lumpur Finance Bhd lwn. Azmi Co Sdn Bhd Dan Satu Lagi [1996] 1 LNS 79 HC* ***(refd)***

*Pegang Mining Company Ltd v. Choong Sam & Ors [1968] 1 LNS 96 PC* ***(refd)***

*Tohtonku Sdn Bhd v. Superace (M) Sdn Bhd [1992] 2 CLJ 1153; [1992] 1 CLJ (Rep) 344 SC* ***(refd)***

**Legislation referred to:**

Petroleum Development Act 1974, ss. 2, 4

Rules of the High Court 1980, O. 15 rr. 6(2)(b)(i), (ii)

*For the appellant - Tommy Thomas (Nur Ashikin Abdul Rahim with him); M/s Tommy Thomas*

*For the respondent - Datin Azizah Hj Nawawi SFC; AG's Chambers*

*[Appeal from High Court, Kuala Lumpur; Civil Suit No: S-21 NCvC-21-2011]*

*Reported by Suhainah Wahiduddin*

## JUDGMENT

**Low Hop Bing JCA:**

### Appeal

**[1]** The Kelantan State Government ("the plaintiff") is appealing against the decision of the High Court in allowing the application by the Government of Malaysia for leave to intervene and be joined as the second defendant ("the joinder application") pursuant to O. 15 r. 6(2)(b)(i) and/or (ii) of the Rules of the High Court 1980. (A reference hereinafter to an Order and a rule is a reference to that Order and rule in the Rules of the High Court 1980).

### Factual Background

**[2]** The original defendant Petroliam Nasional Berhad ("Petronas") is a company incorporated under the Companies Act 1965. It has been conferred with the rights, powers, privileges and liberties set out in the Petroleum Development Act 1974 (PDA 1974) which came into force on 1 October 1974. More specifically, s. 2 of the PDA 1974 vested in Petronas the entire ownership in, and the exclusive rights, powers, liberties and privileges of exploring, exploiting, winning and obtaining petroleum whether onshore or offshore of Malaysia. (A reference hereinafter to a section is a reference to that section in the PDA 1974).

**[3]** Section 2 was given practical effect on 26 March 1975 when the Government of Malaysia entered into an agreement with Petronas.

**[4]** Consistent with s. 4, Petronas and the Government of Malaysia entered into another agreement, also dated 26 March 1975, setting out the consideration for the vesting of ownership and the rights, powers, liberties and privileges, particularly the payment that would be received for petroleum won, gathered and sold by Petronas.

**[5]** On 9 May 1975, the plaintiff and Petronas entered into an agreement ("the Kelantan Petroleum Agreement") whereby, in consideration of the vesting by the plaintiff of the entire ownership in and the exclusive rights, powers, liberties and privileges of exploring, exploiting, winning and obtaining petroleum whether

A onshore or offshore of Kelantan, Petronas will make cash payments equivalent to 5% of the value of Petroleum won and gathered onshore and offshore of Kelantan and sold by Petronas, its agents or contractors.

B **[6]** Subsequently, when disputes arose, the plaintiff filed the action in the High Court against Petronas seeking, *inter alia*, the following orders:

(1) Specific performance of the Kelantan Petroleum Agreement;

C (2) An account be taken or an inquiry be ordered requiring Petronas to make full and truthful disclosure of all relevant facts relating to cash payments payable to the plaintiff including:

D (a) The period from which petroleum has been produced, won or obtained offshore of Kelantan;

(b) The areas/blocks from which petroleum was won and obtained;

E (c) The amount of cash payments so payable to the plaintiff;

(d) All arrears of cash payments so accounted be paid to the plaintiff within one month of an order of the court; and

F (e) All future cash payments be paid to the plaintiff by Petronas for petroleum produced offshore of Kelantan in accordance with the terms of the PDA 1974 and the Kelantan Petroleum Agreement.

**[7]** The Government of Malaysia then filed the joinder G application, which the plaintiff resisted, while Petronas raised no objection thereto.

**Joinder Under O. 15 r. 6(2)(b)(i) And (ii)**

H **[8]** Mr Tommy Thomas (assisted by Ms Nur Ashikin bt Abdul Rahim) argued for the plaintiff that:

(1) the plaintiff was concerned only with Petronas, and has no cause of action nor any remedy against the Government of Malaysia, and has never questioned the Government of I Malaysia's right to receive payments under the PDA 1974, the

amount being equivalent to 5% of the value of the petroleum won and obtained onshore and offshore the 13 states of Malaysia (including Kelantan), pursuant to the Government of Malaysia's own agreements with Petronas;

(2) Any determination by the court on the expression "onshore and offshore" of Kelantan in the action would have no bearing on the payments to the Government of Malaysia, which has a separate and an independent right to claim the payments;

(3) Petronas has not ceased payments to the Government of Malaysia; and

(4) The plaintiff was only interested in its entitlement without touching on the rights of the Government of Malaysia, as a result of which the rights of the Government of Malaysia were not affected.

**[9]** Learned senior federal counsel Datin Azizah Haji Nawawi canvassed that the Government of Malaysia has satisfied the grounds that enable intervention under O. 15 r. 6(2)(b)(i) and (ii) as its legal interest would be directly affected in the proceedings or any judgment of the court.

**[10]** The issue for our determination is:

> Upon a true construction of the requirements set out in O. 15 r. 6(2)(b)(i) and (ii), was the High Court correct in granting the Government of Malaysia leave to intervene and be joined as the second defendant?

**[11]** Under O. 15 r. 6(2)(b)(i) and (ii), the court is empowered to grant leave to intervene and join parties. The requirements are prescribed as follows:

> 6. Misjoinder and non-joinder of parties (O. 15 r. 6)
>
> (1) ...
>
> (2) At any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application:
>
> (a) ...
>
> (b) order any of the following persons to be added as a party, namely:

A (i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or

B (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter;

C

but no person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorized.

D **[12]** Pursuant to O. 15 r. 6(2)(b), the use of the word "or" between limbs (i) and (ii) means that the requirements are disjunctive, and it suffices to fulfil one of the limbs. The proposed intervener ie, the Government of Malaysia may be joined as a party upon fulfilment:

E (1) under limb (i), that it ought to have been joined as a party or its presence before the court is necessary to ensure that all matters in dispute may be effectually and completely determined and adjudicated upon; or

F (2) under limb (ii), that it has an interest in the subject matter of the action and the court considers that it would be just and convenient to determine the issue as between it and any party to the action ie, the plaintiff as well as between the parties to the action including Petronas within the same proceedings.

G **[13]** The main objective of O. 15 r. 6(2)(b) is to prevent a multiplicity of proceedings. A wide discretion is vested in the courts to make an order so that all matters in dispute can be effectually and completely determined and adjudicated upon: See H *Kuala Lumpur Finance Bhd lwn. Azmi Co Sdn Bhd Dan Satu Lagi* [1996] 1 LNS 79.

**[14]** The *locus classicus* which sets out the test in determining whether a person ought to be added as a party to the action has I been authoritatively established by the Privy Council in *Pegang Mining Company Ltd v. Choong Sam & Ors* [1968] 1 LNS 96. The

Privy Council considered that the better way of expressing the test is: will the proposed intervener's rights against or liabilities to any party to the action in respect of the subject matter of the action be directly affected by any order which may be made in the action? This test has now become settled law as shown by our apex court in eg:

(1) *Arab Malaysian Merchant Bank Bhd v. Dr Jamaludin Dato' Mohd Jarjis* [1991] 2 CLJ 862; [1991] 1 CLJ (Rep) 19 SC;

(2) *Tohtonku Sdn Bhd v. Superace (M) Sdn Bhd* [1992] 2 CLJ 1153; [1992] 1 CLJ (Rep) 344 SC; and

(3) *Chong Fook Sin v. Amanah Raya Bhd & Ors* [2010] 7 CLJ 917 FC.

**[15]** The subject matter of the dispute in the instant appeal revolves around the plaintiff's rights over petroleum in the continental shelf offshore of Kelantan. The crux of the plaintiff's claim is that it had vested in Petronas the plaintiff's entire ownership in and its exclusive rights to win and obtain petroleum lying onshore or offshore of Kelantan and, in consideration thereof, Petronas was to make cash payments to the plaintiff according to a prescribed formula as pleaded in paras 18, 20 and 23 of the statement of claim. The plaintiff's cause of action against Petronas has cast its focus on Petronas' alleged breaches of obligations under the Kelantan Petroleum Agreement by reason of the alleged failure to make cash payments in respect of petroleum extracted offshore of Kelantan as averred in paras. 33 to 39 of the statement of claim.

**[16]** On the other hand, Petronas has refuted the plaintiff's claim and stated in its defence that the petroleum in question belongs to the Government of Malaysia and therefore the Government of Malaysia is entitled to the cash payments.

**[17]** Significantly, the Government of Malaysia had entered into the aforesaid two agreements (both dated 26 March 1975) which vested in Petronas the ownership of petroleum in consideration of cash payments pursuant to ss. 2 and 4 in respect of petroleum lying onshore or offshore of Malaysia, even before the Kelantan Petroleum Agreement came into being. The Government of Malaysia relies on the provisions in the Continental Shelf Act

A 1966, the Emergency (Essential Powers) Ordinance No. 7 of 1969 and the Petroleum Mining Act 1966 in support of its claim that petroleum lying in waters beyond three nautical miles adjacent to the coast of Kelantan and in the continental shelf belongs to the Government of Malaysia. The plaintiff's claim in the action
B allegedly goes beyond the three nautical miles adjacent to the coasts of Kelantan as seen in paras. 33 to 39 of the statement of claim, thereby touching on the entitlement and rights of the Government of Malaysia. Based on the aforesaid two agreements, there are obvious disputes between the plaintiff and the
C Government of Malaysia relating to the rights and ownership of petroleum which were vested in Petronas. The plaintiff's claim premised on the Kelantan Petroleum Agreement clearly affects the rights of the Government of Malaysia. While the Kelantan Petroleum Agreement refers to "offshore of Kelantan", the PDA
D 1974 provides for "offshore of Malaysia". The bone of contention lies in the legal effect of the use of different expressions. This begs the questions relating to the legal rights of the Government of Malaysia under PDA 1974, thereby raising particularly the issues of ownership of petroleum viewed against the reliefs claimed by the
E plaintiff.

**[18]** There are several issues or questions which are crucial and which require determination in the plaintiff's action in order to resolve the plaintiff's rights. These issues or questions have direct
F legal effect on the rights of the Government of Malaysia whose presence before the court is clearly necessary to ensure that the matter in dispute arising from ownership of petroleum is effectually and completely determined and adjudicated upon.

G **[19]** Hence, to determine the issues between the plaintiff on the one hand, and Petronas and the Government of Malaysia on the other, it would be just and convenient that the Government of Malaysia be added as a party to the High Court action.

**[20]** The Government of Malaysia as the proposed intervener has
H satisfied the requirements of O. 15 r. 6(2)(b)(i) and/or (ii) to enable it to intervene and to be joined as the second defendant in the proceedings before the High Court.

I

## Conclusion

**[21]** Our answer to the above question is in the affirmative. As the learned judge of the High Court is correct in allowing the joinder application, this appeal is therefore dismissed. We ordered costs in the cause. The High Court decision is hereby affirmed.